

## REMARKS

The present application has 66 claims with Claims 1, 46, 53, 54, 58, 59, and 66 being independent claims. All claims stand rejected. Claim 58 is cancelled herein.

Responsive to each paragraph of the Office Action, the Applicant has the following remarks:

### **Specification:**

The Examiner requested an amended title. Although the Applicant believes that the title "Occasion-Based Marketing" clearly indicates the nature of the invention to one of ordinary skill in the art, the Applicant has added the term "lifestyle" so as to stress the nature of the "occasions" described herein, i.e., "Methods and Systems for Occasion-Based Lifestyle Marketing".

### **35 U.S.C. §101 and 35 U.S.C. §112:**

The Examiner rejected Claim 58 under 35 U.S.C. §101. The Applicant has cancelled Claim 58.

The Examiner also rejected Claims 44 and 45 under 35 U.S.C. §101 as being directed to non-statutory subject matter and under 35 U.S.C. §112, second paragraph, as being indefinite. The Examiner stated that the steps of Claim 1 should be incorporated into Claims 44 and 45. The Examiner further concluded that Claims 44 and 45 must be independent claims.

The Applicant respectfully traverses the Examiner's rejection of these claims under both statutes. These claims are clearly dependent claims. The steps of Claim 1 (and Claim 39) are in fact expressly incorporated therein, i.e., "[a] computer readable medium having computer-executable instructions for *performing the steps recited in claim 1.*" (Emphasis

added.) As a result, these claims meet the statutory subject matter requirement of 35 U.S.C. §101 because Claim 1 recites statutory subject matter.

The claims also meet the distinctiveness requirements of 35 U.S.C. §112 because the steps of Claim 1 are in fact incorporated therein. The Applicant further points out that this style of claiming generally is not considered unusual or indefinite. Claims directed to computer executable instructions stored on a computer-readable media are considered to define patentable subject matter. *See In re Beauregard*, 35 U.S.P.Q.2d 1383 (Fed. Cir. 1995). In addition, the Patent Office routinely allows *Beauregard*-type claims in dependent form. By way of example, the Examiner's attention is directed to Claim 21 of U.S. Patent No. 6,234,802 to Pella, et al. ("a computer-readable medium having computer executable instructions for performing the method of Claim 1.")

**35 U.S.C. §102:**

The Examiner rejected Claims 1-66 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,649,114 to Deaton, et al. Deaton describes various methods for increasing customer loyalty and customer traffic by analyzing consumer purchase history data so as to provide target marketing.

The Applicant respectfully traverses the Examiner's rejection of independent Claim 1. Independent Claim 1 states as follows:

A method for promoting the selection of an item by a predetermined type of consumer, said method comprising the steps of:

determining one or more representative activities of said predetermined type of consumer;

determining one or more representative uses of said item by said predetermined type of consumer during said one or more representative activities; and

creating demand for said item by said predetermined type of consumer based upon said one or more representative uses of said item by

said predetermined type of consumer during said one or more representative activities.

The Examiner took the position that the evaluation of a customer's purchase history data essentially reads on the step of "determining one or more representative activities of said predetermined type of consumer" as called for in the claim. The customer purchase history data described in Deaton includes volume purchase data, frequency purchase data, time of purchase data, preference data, etc.

The Applicant asserts that the Examiner has strained the ordinary definition of the term "representative activities", i.e., "the when" of the invention. *See* specification at page 11, line 20-page 12, line 11. As opposed to the shopping data analyzed in Deaton, the activities claimed herein and defined in the specification are truly the activities of a given consumer during a particular day. For example, the activities may include "wake up and breakfast"; "in transit to work or school"; "after school sports", etc. The Applicant is thus using the term "representative activities" in its normal sense, i.e., what the consumer does during his or her day. (Hence, the title "Occasion-Based Marketing".) Deaton, on the other hand, is concerned with a consumer's shopping habits or frequency, i.e., how often the consumer visits a particular store or how often a consumer buys a particular product. Deaton therefore is not involved in a consumer's day-to-day activities as claimed herein.

Further, the only "activity" involved in Deaton, at best, is shopping. Even if "shopping" may be considered a representative activity, however, there is no suggestion of *determining* anything as called for in the claim. Rather, the activity of the consumer (shopping) is assumed without any analysis other than what happens inside the store. The Applicant thus asserts that Deaton does not render obvious the first element of Claim 1.

Further, Deaton cannot teach or suggest the remaining elements of the claim even if “shopping” can be considered a determined representative activity. For example, the second element of Claim 1 is to determine one or more representative uses of an item by the consumer during the representative activities. Deaton in no way describes “using” anything while shopping. Rather, the point of Deaton is to increase the time a consumer spends shopping at a particular store. There is no disclosure in Deaton of connecting the use of any particular item with the shopping activity.

Further, Deaton also does not teach or suggest the third element of Claim 1 concerning creating a demand for the item based upon the representative uses of the item by the consumer during the representative activities. Again, the only purpose in Deaton is to increase the amount of time or money a shopper spends at a given store. There is no connection between a given product or item, a given activity, the uses of that item during that activity, or increasing demand for that item during that activity. For example, there is no discussion in Deaton as to how to increase demand for a beverage by a student involved in after school sports by suggesting a connection between the activity and the product.

The Applicant thus asserts that the claim is patentable over the cited reference. Deaton is concerned only with how and why a consumer shops. As opposed to analyzing shopping data, the present claim focuses on the daily activities of a consumer and how to promote a given item based upon how a consumer uses that item during those activities. Deaton, however, in no way suggests the use of a product, e.g., the coffee brand, by promoting drinking the coffee while shopping. The Applicant thus asserts that Deaton does not render obvious the present invention.

The Applicant further traverses the Examiner's rejection of Claims 2-4 concerning various limitations on the step of determining the representative activities. These limitations include the gathering and analysis of consumer lifestyle information. The Examiner stated that Deaton discloses the steps of gathering consumer lifestyle information through the purchase history of an individual consumer so as to provide personal discount coupons. In addition to the reasons described above, the Applicant further traverses the Examiner's rejection on the grounds that the only activity described in Deaton is shopping.

The Applicant respectfully traverses the Examiner's rejection of Claims 5-19 concerning limitations on the predetermined type of consumer, the representative activities, the representative uses, and the steps of creating demand. In addition to the reasons described above, Deaton is silent on these further limitations. For example, Deaton in no way teaches or suggests anything concerning a "home category manager" (Claim 5), representative uses of a beverage (Claim 6), creating demand by the home category manager by suggesting the use of a beverage as a meal enhancer (Claim 7), creating demand by the home category manager by suggesting the use of the beverage as refreshment (Claim 8), the consumer including blue collar adults and teens (Claim 9), representative uses of a beverage (Claim 10), creating demand by suggesting the use of the beverage as an energizer (Claim 11), creating demand by promoting an item as addressing a need associated with one or more of the uses (Claim 14), creating demand by associating the item with one or more of the activities (Claim 15), or creating demand for the item by selecting one or more brands (Claim 16-19).

The Applicant further traverses the Examiner's rejection of Claims 24-31 concerning bundling an item with another. In addition to the reasons described above, Deaton appears to be silent on promoting an item by bundling it with a different item.

The Applicant further traverses the Examiner's rejection of Claims 34-37, 39, 41, and 42 for the reasons given above. The Applicant further traverses the Examiner's rejection of Claim 35 concerning connecting the name of the item with the representative activities. Deaton appears to be silent on combining the name of the product with any given activity. The Applicant further traverses the Examiner's rejection of Claim 42 concerning the nature of the purchasing trip, including quick mission trips, quick meal solution trips, and stock up trips. Deaton appears to be silent on the nature of the shopping trip.

The Applicant respectfully traverses the Examiner's rejection of Claims 47-52. The Applicant traverses the Examiner's rejection of the claims for the same reasons given below with respect to Claim 46. The Applicant further traverses the rejection on the grounds that Deaton is silent on the various types of representative activities (Claim 47), the various types of representative uses (Claim 48), the various types of shopping trips (Claims 49 and 50), and messaging directed to a home category manager (Claims 51 and 52).

The Applicant respectfully traverses the Examiner's rejection of Claims 20-23 concerning a predetermined type of packaging for the reasons given above. Although the Examiner is correct that any item will have a selected type of packaging, the claims herein are directed towards tying that packaging with the step of creating demand. Hence, the limitations concerning immediate consumption packaging and future consumption packaging (Claims 22 and 23) for creating demand in a given consumer.

The Applicant respectfully traverses the Examiner's rejection of Claims 32, 33, 38, and 43 concerning the nature of the messaging for the reasons given above. Likewise, the Applicant respectfully traverses the Examiner's rejection of Claims 44 and 45 concerning carrying out the steps of the invention through software for the reasons give above. The

Applicant also respectfully traverses the Examiner's rejection of Claim 40 concerning consumer intercept surveys for the reasons given above and on the grounds that Deaton appears to be silent on consumer intercept surveys.

The Applicant respectfully traverses the Examiner's rejection of independent Claim 46. Independent Claim 46 is similar to Claim 1, with the addition of the step of determining the manner in which the consumer selects the item in the predetermined shopping environment. As further defined in Claim 49, this method includes an analysis of the different types of shopping trips that a consumer may take, i.e., a quick meal solution trip or a stock up shopping trip. Based upon this information, the invention provides a means for creating demand for that consumer in that environment based upon the nature of the trip and based upon the uses of the item by the consumer during one or more activities. In addition to the reasons described above with respect to Claim 1, Deaton is silent on the nature of these different types of shopping trips. Likewise, Deaton is silent on the step of aiming any type of marketing towards a quick trip shopper or a stock up shopper. Rather, Deaton is only concerned with increasing the frequency of store visits and the amount purchased while in the store, i.e., the coffee example cited by the Examiner. The coffee coupon may encourage a consumer to visit a given store more often, but it has nothing to do with occasion-based marketing or the nature of the shopping trip.

The Applicant respectfully traverses the Examiner's rejection of independent Claim 53. Independent Claim 53 states as follows:

A method for promoting the selection of a beverage by a consumer, comprising the steps of:  
determining the daily activities of said consumer;  
determining the needs of said consumer for said beverage during said daily activities;  
marketing said beverage in association with said needs of said consumer for said beverage during said daily activities.

The Examiner asserts that the step of determining the daily activities of the consumer reads on “purchasing activities corresponding to the consumer’s purchase history” as described in Deaton. As described above, however, the Applicant asserts that the analysis of a consumer’s purchasing habits does not teach or suggest the step of determining the daily activities of the consumer. At best, the only daily activity even arguably described (but not determined) by Deaton is shopping. Deaton, however, does not suggest the remaining elements of the claim if the only activity is shopping.

For example, the second step concerns determining the needs of the consumer for a beverage during the daily activities. Deaton is clearly silent on whatever needs a consumer may have for a beverage during a shopping trip. Likewise with respect to the third element concerning marketing, Deaton is silent on marketing the beverage (or anything else) in association with the needs of the consumer for the beverage during the shopping trip. Deaton may provide a coupon to buy a beverage, but Deaton is silent on promoting drinking the beverage during the shopping trip.

The Applicant further traverses the Examiner’s rejection of independent Claim 54. Claim 54 includes the occasion-based marketing steps as described above but adds further limitations concerning the effectiveness of the marketing campaign, i.e., determining the difference between the number of items purchased during a first predetermined interval and a second predetermined interval. The Applicant traverses the Examiner’s rejection for the reasons given above with respect Claim 1. Even if the representative activities in Deaton suggest shopping, Deaton does not suggest anything about a consumer’s use for a particular product during the actual shopping trip. In other words, Deaton cannot render the claim obvious because

Deaton does not describe marketing the particular brand of coffee to be sipped by the consumer during the shopping trip.

The Applicant further traverses the Examiner's rejection of Claims 55-57 and 63-64 for the reasons given above with respect to Claim 54 and the reasons given below with respect to Claim 59.

The Applicant respectfully traverses the Examiner's rejection of independent Claim 59. Claim 59 also includes the steps of determining the representative activities, storing data concerning such, receiving data concerning representative uses for an item by the consumer, storing the data, and determining the relationship between the representative activities and the representative uses. The Applicant respectfully traverses the Examiner's rejection for the reasons give above with respect to Claim 1. As before, if the representative activity is shopping, then Deaton is silent on promoting the use of any given item during shopping. Once again, Deaton does not provide marketing for the coffee brand such that the consumer desires to sip the particular coffee brand while shopping.

The Applicant further traverses the Examiner's rejection of Claims 60-62 and 65 for the reasons given above with respect to Claim 59.

The Applicant respectfully traverses the Examiner's of independent Claim 66. Independent Claim 66 concerns a storage device and a processor. The storage device stores data relating to one or more activities of a consumer and one or more needs of that consumer for an item. The Applicant respectfully traverses the Examiner's rejection for the reasons given above with respect to Claim 1. As described in detail above, the only "activity" described in Deaton is shopping. There is no disclosure in Deaton of promoting any type of product for use during this activity.

**Other References:**

The Examiner also directed the Applicant's attention to several references that may be prior art. For example, an article by Lena H. Sun entitled "Checking Out The Consumer." This article concerned various ways supermarkets are analyzing and using purchase data, including electronic coupons similar to those described in Deaton. The Applicant shows the Examiner that the Sun article only deals with an analysis of purchasing data. There is no consideration in the article given to any consumer activities other than shopping. There is certainly no consideration in the article of the use of a product while a consumer is shopping. Finally, the Sun article is silent on promoting an article based upon a consumer's use of that article during a representative activity.

The Examiner also drew the Applicant's attention to U.S. Patent No. 5,974,396 to Anderson, et al. Anderson describes various types of consumer cluster analyses. Specifically, information concerning the product, the consumer, and transactional data are maintained in a relational database. The consumer is then targeted with marketing directed towards the specific buying habits. As above, Anderson appears to be silent on occasion-based marketing as described herein. Specifically, Anderson is silent on marketing a product based upon a consumer's use of that product during a specific activity.

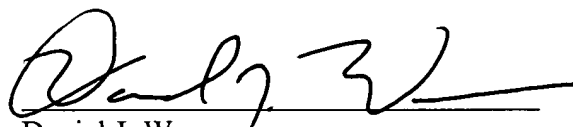
Finally, the Examiner also stated that the references cited by the Applicant in the Information Disclosure Statement may read on the invention. These items include a presentation entitled "The Balanced Budgets of Nancy Jones" and several advertisements by The Coca-Cola Company. Although these documents may suggest the promotion of a beverage in context of a given activity, the budget presentation is silent on the means for creating demand and the advertisements are completely silent on any type of determining step.

Please note that these comments on the other references are not intended as a full and complete analysis or critique of these documents. Numerous other grounds for patentability may exist. The Applicant thus reserves the right to comment further.

### CONCLUSION

The Applicant believes it has responded to each matter raised by the Examiner. Allowance of the claims is respectfully solicited. Any questions can be directed to the undersigned at (404) 853-8028.

Respectfully submitted,



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